IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No.1159 of 2005

DATE OF ORDER: 8.2.2007

Pardeep Kumar

...Petitioner(s)

Versus

Amar Nath

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. M.L. Sarin, Sr. Advocate with
Mr. Vivek Sood, Advocate.
Mr. Akshay Bhan, Advocate.

M.M. AGGARWAL,J

Ejectment petition filed by Amar Nath against the present petitioner-tenant was allowed on 12.8.2004 by the Rent Controller, Amritsar on the ground of bonafide necessity. Thereafter an appeal filed by the present petitioner-tenant was dismissed by the appellate authority, Amritsar on 3.2.2005.

This is revision petition now filed by the tenant.

On behalf of the petitioner, it has been argued that during the pendency of the petition, two adjoining shops one in possession of Tirlok

Singh was got vacated by the landlord, now respondent on 6.2.2004, which measured 7'9”x 9' and another adjoining shop in possession of Sanjiv Kumar tenant was got vacated on 25.4.2005, which measured 10' x 12'. It was pointed out that the present shop measured only 10' x 10' and when two of the adjoining shops have already been got vacated then there is change of circumstances and the ground of bonafide requirement does not exist. He relied on judgments reported in Hasmat Rai and another v. Raghunath Prasad, AIR 1981 SC 1711 and Maqboolunnisa v. Mohd Saleha Quaraishi, JT 1998 (9) SC 40. It was further argued on behalf of the petitioner tenant that the landlord has shown his wish to start business and wish/desire does not amount to bonafide necessity. He relied on judgments reported in Kempaiah v. Lingaiah and Others, (2001) 8 Supreme Court Cases 718 and Deena Nath v. Pooran Lal, 2001(2) RCR 131.

Counsel for the petitioner also argued that the petitioner had earlier filed a petition under Section 13-A of the East Punjab Urban Rent Restirction Act on 31.7.1996, which was withdrawn on 29.10.1996 and present petition filed under Section 13 of the Act was not maintainable due to withdrawal of the earlier petition. He relied on a judgment of this court reported in Mehtab Singh v. Tilak Raj Arora and another, 1988 RLR 151.

Petitioner is stated to be a retired employee of Punjab State. He was Senior Assistant in the Cooperative department of Punjab State. Section 13-A is a privilege given to specified landlord to get immediate possession of the rented premises whereas Section 13 applies to all categories of landlords. If a person chooses to give up the privilege of filing petition under Section 13-A and withdraws that petition and comes under the general category by filing petition under Section 13 of the Act, that does

not mean that the petition filed under Section 13 of the Act will not maintainable.

In sub para 2 of the petition filed before the Rent Controller, petitioner had pleaded as under:

> "That the demised premises is bonafide required by the applicant for his own use and occupation. The applicant who was previously working as Senior Assistant in the office of Assistant Registrar, Cooperative Societies, Ajnala has retired on 31.10.1995. After his retirement the applicant-landlord is jobless and is doing no work. He has decided to start a General Merchandise-cum-Provision Store in the demised premises as well as in the adjoining shop in occupation of another tenant Sanjeev Kumar. The eldest son of the applicant namely Rakesh Kumar who is also jobless is also to be accommodated in some business and the said son of the applicant will assist his father viz the applicant in carrying on such business to be started by the applicant in the demised shop as well as in the adjoining shop referred to above. The applicant has got no other shop and/or business premises in his possession available to him in the Urban area of Amritsar nor he has vacated any such building without any sufficient cause after the commencement of Act III of 1949."

The tenant in his reply had stated that the applicant was doing job and was unable to carry any business. Then during evidence,

respondent tenant Pardeep Kumar in his affidavit Ex.R-1 had deposed that the landlord was carrying on his business in the name of Sharma Laboratory in the demised building and the property is not required bonafidely by the applicant or his family members and that the son of the landlord was doing his own textile business. Statement of Pardeep Kumar-tenant was found contradictory with the statement of another witness RW1 Pappu, who had stated that Rakesh Kumar son of Amar Nath was doing business of Cement at Majitha Road, Amritsar whereas Pardeep Kumar had stated that the son of the landlord was doing textile business. However, no document was produced before the Rent Controller to show either Amar Nath or his son was doing any business anywhere.

From all that, the Rent Controller had held that the petitioner bonafidely required the property for his own use and occupation and that of his son. It is settled law that a landlord is a best Judge of his own needs.

Bonafide requirement had been pleaded. If during evidence, landlord stated that he wished to start business, it does not mean that there is no bonafide need.

Counsel for the respondent had relied on judgments reported in Niranjan Lal Mittal v. Daya Kishan, 2006(1) RCR 433, National Textiles Corporation Ltd v. S.K. Jain and another, 2006(1) RCR 597 and Vinod Kumar v. Sant Lal, 2006(1) RCR 316.

It had come out that the adjoining shops got vacated were small in size, one of 7'9" x 9' and another of 10' x 12' and the present disputed shop is also of 10' x 10'. Even in the petition, landlord had pleaded that he had decided to start a General Merchandise-cum-Provision Store in the demised shop in

occupation of another tenant Sanjeev Kumar. It will show that the landlord required bigger premises for starting business.

There are concurrent findings of two courts below and it cannot at all be said that the need of the landlord, now respondent is not bonafide. The landlord, now respondent had come on retirement and if he wants to start business in a bigger premises, which may be in an area comprising of three shops of different tenants, still it cannot be said that the petition was filed malafide and the need of the landlord was not bonafide.

Under these circumstances, there is no merit in the present petition.

Lastly counsel for the petitioner had prayed that if the petition is dismissed on merits then three months to vacate be given.

Tenant-petitioner is granted three months time from today to vacate provided he pays all the arrears of rent and files an undertaking before the Rent Controller to this effect within one month.

Petition is dismissed.

February 08, 2007 (M.M. AGGARWAL)
manoj JUDGE